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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

JOSIE REYNOLDS,
Plaintiff and Respondent,

v.

CORNERSTONE STAFFING
SOLUTIONS, INC.,

Defendant and Appellant.

A110952

(Alameda County
Super. Ct. No. HG05198946)

Defendant CornerStone Staffing, Inc. (CornerStone) appeals from an order denying its petition to compel arbitration of claims for disability discrimination and unfair business practices, among other causes of action, asserted by its former employee, plaintiff Josie Reynolds. CornerStone contends the trial court erred in concluding that the arbitration agreement between the parties is unconscionably one-sided and thus unenforceable under *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83 (*Armendariz*). Although we consider the question to be exceptionally close, we conclude that CornerStone is correct and shall reverse.

Factual and Procedural History

On February 15, 2005, Reynolds filed a complaint against CornerStone alleging causes of action for disability discrimination in violation of the Fair Employment and Housing Act (Gov. Code, § 12920 et seq.), wrongful termination in violation of Labor Code section 132a, intentional infliction of emotional distress, and unlawful business practices in violation of Business and Professions Code section 17200. In lieu of an answer, CornerStone filed a petition to compel arbitration of Reynolds's claims and to

stay the action pending arbitration. CornerStone's petition alleged that the parties' arbitration agreement is contained in two documents: the written offer of employment (offer letter) that Reynolds signed, and CornerStone's mandatory arbitration policy (policy), which Reynolds acknowledged she had read and accepted.

The May 5, 2003 offer letter provides in relevant part, "Any dispute regarding the application or interpretation of this offer letter and the attached employment agreement, or any dispute regarding your employment or termination of employment with the company, including statutory discrimination claims under federal and California laws, shall be resolved in final and binding arbitration pursuant to the Rules for Resolution of Employment Disputes of the American Arbitration Association." The policy reiterates that "Where permitted by law, any dispute, claim or controversy arising out of the employee's employment relationship with CornerStone Staffing Solutions, Inc. ('Company') or the termination of the employment relationship, including, but not limited to, alleged violations of federal, state and/or local statutes, such as alleged violations of federal, state and/or local statutes (including Title VII of the Civil Rights Act of 1964, the Age Discrimination In Employment Act, the Americans With Disabilities Act and the California Fair Employment and Housing Act), breach of the covenant of good faith and fair dealing, violation of public policy or any other alleged violation of the employee's statutory, tort, contractual or common law rights, which cannot be resolved through either direct discussion or mediation, shall be submitted to final and binding mandatory arbitration before a neutral arbitrator, pursuant to the Resolution of Employment Disputes Rules of the American Arbitration Association." The policy provides further that "The employee and the company agree that this arbitration shall be the exclusive means of resolving any dispute, claim or controversy arising out or relating to the employee's employment relationship with the company or any of its clients, or the termination from the company or any of its clients, as set forth above, and that no other action will be brought by the employee in any court or other forum, except those claims specifically excluded by law. [¶] If any such dispute, claim, or controversy should arise, the employee agrees to deliver a written request for

arbitration to the company within one (1) year of the date of the occurrence giving rise to said dispute, claim or controversy provided, however, that if the statute of limitations on any claim is greater than one year such statute of limitations shall apply. The employee agrees to respond within fourteen (14) calendar days to each communication regarding the selection of an arbitrator and the scheduling of a hearing. The request for arbitration shall set forth a description of the dispute in sufficient detail to advise the company of the nature of the dispute that was subject to arbitration.” The only exceptions to the arbitration procedure identified in the policy are claims for unemployment compensation insurance and for workers’ compensation benefits.

Reynolds opposed the petition on the ground that the arbitration agreement was, among other things, unconscionable and thus unenforceable. She offered as an exhibit her employment agreement, which includes a provision that she claims authorized CornerStone to obtain injunctive relief judicially for a violation of the agreement.

The trial court denied CornerStone’s petition on the ground that the arbitration agreement is unconscionable. The court found that “[f]or thirteen years, Reynolds was employed by Spectrum Personnel, Inc., where she was eventually promoted to the position of District Manager. . . . CornerStone acquired some of the assets of Spectrum, and Reynolds was retained to continue working in the same capacity for CornerStone.” The court found further that as a condition of her continued employment with CornerStone, Reynolds was required to sign several documents, including the offer letter, an acknowledgement form that stated she read and agreed to CornerStone’s mandatory arbitration policy, and the employment agreement. She signed the documents on the same day she received them. With regard to procedural unconscionability, the trial court found, “CornerStone sent several standardized documents it drafted to Reynolds, and required her to sign them as a condition of her continued employment. . . . Reynolds did not negotiate the terms of the documents submitted to her, including the arbitration agreement, and Reynolds signed the documents on the same day she received them. . . . In what can only be characterized as patently ‘oppressive,’ the weaker party, Reynolds, was precluded from ‘enjoying a meaningful opportunity to negotiate and choose the

terms of the contract.’ [Citation.] Therefore, because CornerStone presented Reynolds an arbitration agreement on a take-it-or-leave-it basis, the agreement is procedurally unconscionable.” As to substantive unconscionability, the court stated, “The [policy] purports to ‘[e]stablish a process for resolution of any dispute, claim, or controversy arising out of the employee’s employment relationship with CornerStone Staffing Solutions, Inc.’ . . . However, the policy expressly applies to ‘[a]ll employees of CornerStone Staffing Solutions, Inc.,’ but makes no mention of whether the policy applies to CornerStone. To that same end, the policy states that (1) arbitration is the appropriate forum for ‘any other alleged violation of the *employee’s* . . . rights,’ and (2) arbitration ‘shall be the exclusive means of resolving any dispute, claim, or controversy arising out of the employee’s employment relationship with the company . . . and that no other action will be brought by the *employee* in any court or other forum.’ . . . These clauses expressly single out the employee’s claims for arbitration, but remain silent on whether CornerStone would be equally bound to pursue its claims through arbitration as well.” The court found that the injunctive relief provision of the employment agreement was further evidence of a lack of mutuality. Accordingly, the court concluded that the policy lacked the requisite mutuality. Finally, the court denied CornerStone’s request to sever the offending provisions of the arbitration agreement. CornerStone filed a timely notice of appeal.

DISCUSSION

A. Standard of Review

“The determination of the validity of an arbitration clause, which may be made only ‘upon such grounds as exist for the revocation of any contract’ [citation], ‘is solely a judicial function unless it turns upon the credibility of extrinsic evidence; accordingly, an appellate court is not bound by a trial court’s construction of a contract based solely upon the terms of the instrument without the aid of evidence.’ ” (*Stirlen v. Supercuts, Inc.* (1997) 51 Cal.App.4th 1519, 1527 (*Stirlen*).) Thus, in cases such as this, in which extrinsic evidence is not disputed, “ ‘[d]eterminations of arbitrability, like the

interpretation of any contractual provision, are subject to de novo review.’ ” (*Ibid.*, italics omitted.)

B. *General Principles*

“California law, like federal law, favors enforcement of valid arbitration agreements.” (*Armendariz, supra*, 24 Cal.4th at p. 97.) Indeed, “California has a strong public policy in favor of arbitration and any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration.” (*Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 686.) “[U]nder both federal and California law, arbitration agreements are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. [Citations.] In other words, under California law, as under federal law, an arbitration agreement may only be invalidated for the same reasons as other contracts.” (*Armendariz, supra*, 24 Cal.4th at p. 98, fn. omitted.)

Employing “general contract law principles,” courts will refuse to enforce an arbitration provision that is unconscionable. (*Armendariz, supra*, 24 Cal.4th at p. 99.) The doctrine of unconscionability “has ‘both a ‘procedural’ and a ‘substantive’ element.” ’ ” (*Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1071 (*Little*).) “The procedural element . . . generally takes the form of a contract of adhesion, ‘which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it.’ ” (*Ibid.*) “Substantively unconscionable terms may take various forms, but may generally be described as unfairly one-sided.” (*Ibid.*) To invalidate the arbitration agreement on unconscionability grounds, it was Reynolds’s “burden . . . to prove both procedural and substantive unconscionability.” (*Crippen v. Central Valley RV Outlet* (2004) 124 Cal.App.4th 1159, 1165 (*Crippen*); *Gutierrez v. Autowest, Inc.* (2003) 114 Cal.App.4th 77, 88 (*Gutierrez*) [“courts refuse to enforce only those agreements that are both procedurally and substantively unconscionable”].) But procedural and substantive unconscionability “need not be present in the same degree.” (*Armendariz, supra*, 24 Cal.4th at p. 114.) “Courts use a ‘sliding scale’ approach in assessing the two

elements.” (*Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 655-656.) “[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa.” (*Armendariz, supra*, 24 Cal.4th at p. 114.)

C. Scope of Trial Court’s Jurisdiction

Initially, CornerStone contends that the court exceeded the scope of its jurisdiction by deciding that Reynolds’s employment agreement as a whole is unconscionable. CornerStone relies on *Buckeye Check Cashing, Inc. v. Cardegna* (2006) __ U.S. __ [126 S.Ct. 1204, 1209-1210], in which the Supreme Court reiterated that “as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract” and “unless the challenge is to the arbitration clause itself, the issue of the contract’s validity is considered by the arbitrator in the first instance.” Applying these rules the court held that because plaintiffs’ challenge to the legality of the contract was not aimed specifically at the arbitration provisions, those provisions are enforceable apart from the remainder of the contract and the enforceability of the contract should be decided by the arbitrator. (*Ibid.*)

In the present case, Reynolds specifically challenged the unconscionability of the arbitration provision. Contrary to CornerStone’s argument, Reynolds’s reference to the injunctive relief provision of the employment agreement is not an attack on the contract as a whole. Rather, that provision was cited to show that the arbitration provision lacks the requisite mutuality. Moreover, CornerStone misstates the trial court’s ruling when it suggests that “no flaw or substantive unconscionability was found to reside in the arbitration provision itself; instead, the trial court based its finding of ‘lack of mutuality’ on the remedies provision of the employment agreement, which were separate from the severable and enforceable arbitration provision.”¹ Accordingly, the trial court did not

¹ Much of CornerStone’s argument on appeal is premised on the assertion that the trial court erred in relying on the provisions of the mandatory arbitration policy in concluding that the arbitration agreement is unconscionable. CornerStone asserts that it “did not and does not contend that Reynolds was obligated to arbitrate by virtue of the

exceed the scope of its jurisdiction in determining that the arbitration agreement itself was procedurally and substantively unconscionable.

D. Procedural Unconscionability

Procedural unconscionability “ ‘has to do with matters relating to freedom of assent.’ ” (Stirlen, *supra*, 51 Cal.App.4th at p. 1532.) It “concerns the manner in which the contract was negotiated and the circumstances of the parties at that time. [Citation.] It focuses on factors of oppression and surprise. [Citation.] The oppression component arises from an inequality of bargaining power of the parties to the contract and an absence of real negotiation or a meaningful choice on the part of the weaker party.” (Kinney v. United HealthCare Services, Inc. (1999) 70 Cal.App.4th 1322, 1329 (Kinney).) “ ‘ “Surprise involves the extent to which the terms of the bargain are hidden in a ‘prolix printed form’ drafted by a party in a superior bargaining position.” ’ ” (Crippen, *supra*, 124 Cal.App.4th at p. 1165.) “[T]here is no general rule that a form contract used by a party for many transactions is procedurally unconscionable. Rather, ‘[p]rocedural unconscionability focuses on the manner in which the disputed clause is presented to the party in the weaker bargaining position. When the weaker party is presented the clause and told to “take it or leave it” without the opportunity for meaningful negotiation, oppression, and therefore, procedural unconscionability, are present.’ ” (Ibid.)

The trial court found that the arbitration agreement was presented on a “take it or leave it” basis, without a reasonable opportunity to negotiate its terms. CornerStone

company’s mandatory arbitration policy, because that policy was outside the scope of Reynolds’s fully integrated employment agreement which expressly and exclusively embodies the parties’ respective obligations.” This statement is entirely inconsistent with the petition to compel arbitration and with statements made in the supporting declaration of its Executive Director of Operations, that “as part of the employment agreement, Reynolds signed an acknowledgment form stating in relevant part, ‘I have read and agree to the arbitration policy.’ . . . [¶] As a condition of employment with Cornerstone, Reynolds by virtue of the above-described signed agreements, and all employees of Cornerstone are subject to Cornerstone’s mandatory arbitration policy”

contends that although Reynolds established that she did not negotiate the terms of the arbitration agreement, she failed to establish that she lacked the opportunity to do so, which is the relevant inquiry. (*Morris v. Redwood Empire Bancorp* (2005) 128 Cal.App.4th 1305, 1320 [oppression refers to “an absence of power to negotiate the terms of a contract”] (*Morris*); *Crippen, supra*, 124 Cal.App.4th at pp. 1165-1166 [plaintiff failed to show procedural unconscionability, in part because there was “no reason in this case to conclude the plaintiff lacked power to bargain”].) *Morris* and *Crippen* are distinguishable, however, in that they do not involve the unequal balance of power typically found in an employment relationship. (*Morris, supra*, 128 Cal.App.4th 1305 [merchant’s action against financial institutions under unfair competition law]; *Crippen, supra*, 124 Cal.App.4th 1159 [consumer’s action for fraud against seller of allegedly defective motor home].) In contrast, in *Little, supra*, 29 Cal.4th at page 1071, the court recognized that “ ‘[i]n the case of preemployment arbitration contracts, the economic pressure exerted by employers on all but the most sought-after employees may be particularly acute, for the arbitration agreement stands between the employee and necessary employment, and few employees are in a position to refuse a job because of an arbitration requirement.’ ” In *Fitz v. NCR Corp.* (2004) 118 Cal.App.4th 702, 722, the court found that a current employee lacked a meaningful opportunity to negotiate when faced with a choice of losing her job of 14 years or agreeing to the terms of the arbitration provision. “Fitz had no opportunity to negotiate the terms of the ACT policy. Nor did Fitz have a meaningful choice. She could either quit her job of 14 years or agree to the terms by merely remaining employed with NCR for one month after the company informed employees of the policy change. Few employees are in a position to forfeit a job and the benefits they have accrued for more than a decade solely to avoid the arbitration terms that are forced upon them by their employer. The ACT policy was presented in a take-it or leave-it manner, and Fitz lacked equal bargaining power. The facts of this case present a high degree of oppressiveness and, therefore, the ACT policy is procedurally unconscionable.” (*Ibid.*; see also *Kinney, supra*, 70 Cal.App.4th at p. 1329 [employee did not have meaningful opportunity to negotiate where employer

provided agreement to its current employees and required employees to acknowledge his or her consent to arbitration provision as a condition of continued employment with the company].)

Here, the mandatory arbitration policy was presented to Reynolds in conjunction with the offer of continued employment. The declaration of CornerStone's Director of Operations acknowledged that acceptance of the arbitration provision was "a condition of employment with CornerStone." Reynolds's declaration states that she was required to sign the documents the same day they were presented and that she "simply did not have time to read all of them." There is no contrary evidence. Under the circumstances, Reynolds's choice was to agree to the policy or risk losing her job of 13 years. We agree with the trial court that the arbitration agreement was entered under circumstances that are procedurally unconscionable.

E. *Substantive Unconscionability*

The substantive element of unconscionability focuses on "overly harsh or one-sided results." (*Armendariz, supra*, 24 Cal.4th at p. 114.) Reynolds contends the agreement is substantively unconscionable because it lacks the requisite "modicum of bilaterality." (*Id.* at p. 117.) "Given the disadvantages that may exist for plaintiffs arbitrating disputes, it is unfairly one-sided for an employer with superior bargaining power to impose arbitration on the employee as plaintiff but not to accept such limitations when it seeks to prosecute a claim against the employee, without at least some reasonable justification for such one-sidedness based on 'business realities.' " (*Ibid.*) The court explained, "an arbitration agreement imposed in an adhesive context lacks basic fairness and mutuality if it requires one contracting party, but not the other, to arbitrate all claims arising out of the same transaction or occurrence or series of transactions or occurrences." (*Id.* at p. 120.)

The offer letter signed by both CornerStone and Reynolds is clearly bilateral in that it provides that "[a]ny dispute regarding the application or interpretation of this letter and the attached employment agreement, or any dispute regarding your employment or

termination of employment with the company” is subject to arbitration. The policy, however, is arguably more ambiguous.

The policy begins by stating that it applies to “all employees” of CornerStone and provides that “[w]here permitted by law, any dispute, claim or controversy arising out the employee’s employment relationship” shall be submitted to arbitration, and four paragraphs later repeats that “[t]he employee and the company agree that this arbitration shall be the exclusive means of resolving any dispute, claim or controversy arising out of or relating to the employee’s employment relationship with the company” This language is unlimited and, as CornerStone emphasizes, applies to “any” dispute. Reynolds contends, however, and the trial court agreed, that despite this broad language, the policy expressly requires only the employee to pursue all of his or her claims through arbitration, but that the same limitation is not placed on the company. The various clauses of the policy, the trial court observed, “expressly single out the employee’s claims for arbitration, but remain silent on whether CornerStone would be equally bound to pursue its claims through arbitration as well.” For example, the employee and the company agree that arbitration shall be the exclusive means of resolving any dispute “and that no other action will be brought by the *employee* in any court or other forum.” The policy does not state that no action will be brought by CornerStone in a court or other forum.

Reynolds finds some support for her interpretation of the arbitration policy from the recent decision in *Higgins v. Superior Court* (2006) 140 Cal.App.4th 1238 (*Higgins*). In *Higgins*, the court held that the following arbitration provision signed by one party was unconscionably one-sided: “*I agree* that any and all disputes or controversies arising under this [a]greement or any of its terms, any effort by any party to enforce, interpret, construe, rescind, terminate or annul this [a]greement, or any provision thereof, and any and all disputes or controversies relating to my appearance or participation in the [p]rogram, shall be resolved by binding arbitration” (*Id.* at pp. 1243, 1253, italics added.) The court explained, “the arbitration provision requires only petitioners to submit their claims to arbitration. The clause repeatedly includes ‘I agree’ language, with

the ‘I’ being a reference to the ‘applicant’ (i.e., each of the petitioners). The only time the phrase ‘the parties’ is used is in the last sentence, where ‘the parties’ agree that, notwithstanding the arbitration provision, the producer has the right to seek injunctive or other equitable relief in a court of law as provided for in Code of Civil Procedure section 1281.1 or other relevant laws.” (*Id.* at p. 1253.) The court rejected the argument that because the arbitration provision applied to “any and all disputes or controversies” it was necessarily bilateral, because it was still only one party who so agreed. (*Id.* at pp. 1253-1254.) Indeed, in that case the other party did not even sign the agreement until after the motion to compel arbitration had been filed. (*Id.* at p. 1254, fn. 11.)

Higgins illustrates the importance of wording arbitration provisions in a manner that makes clear that the obligation to arbitrate applies to both parties to the agreement. In the arbitration policy involved in the present case, there assuredly is, as the trial court found, language that may be read to suggest that the obligation applies only to Reynolds. The policy provides explicitly that no court action will be brought “by the employee” but does not say the same for the employer; the policy specifies the manner in which the employee shall institute arbitration but says nothing about how the employer must do so. Nonetheless, the documents must be read as a whole. The offer letter provides that any dispute regarding Reynolds’s employment shall be resolved by arbitration. The letter was signed by both CornerStone and Reynolds and contains no language that can be interpreted to exclude CornerStone from the scope of the obligation to arbitrate. The document amplifying the arbitration policy also expressly provides that “The employee *and the Company* agree that this arbitration shall be the exclusive means of resolving any dispute” (Italics added.) While the policy makes explicit the ramifications of this agreement upon the employee—perhaps to avoid any misunderstanding on the part of the employee—there is nothing in the additional language that qualifies or limits CornerStone’s agreement to submit to arbitration.

In addition, in *Higgins*, the court identified “additional elements of substantive uncounscionability” in the agreement, including the provision requiring that arbitration costs be borne equally by the parties. (*Higgins, supra*, 140 Cal.App.4th at p. 1254.) In

this case, CornerStone agreed in the policy that “[t]he costs of arbitration . . . shall be borne by the company.” The agreement in this case does not have any of the hallmarks of over reaching typically seen in agreements invalidated by the courts due to substantive unconscionability. “Those cases include: (1) where the agreement unfairly favored the employer by allowing for appeal of arbitration awards in excess of \$50,000 (*Little, supra*, 29 Cal.4th at pp. 1072-1074); (2) where the employer imposed forum costs on the employee (*McManus v. CIBC World Markets Corp.* (2003) 109 Cal.App.4th 76, 93); (3) where the employee’s damage remedy was limited, the employee was required to pay all costs, and the required hearing location was Oakland (*Pinedo v. Premium Tobacco Stores, Inc.* (2000) 85 Cal.App.4th 774, 781); . . . (4) where the contract provided that, pending the arbitration hearing, the employee lost his job, salary, and benefits. (*Stirlen*[, *supra*,] 51 Cal.App.4th [at p.] 1542)” ; (*Nyulassy v. Lockheed Martin Corp.* (2004) 120 Cal.App.4th 1267, 1281) and (5) where the employee’s claim had to be filed within 180 days irrespective of any longer deadlines that may be allowed by statutes of limitations. (*Id.* at p. 1283.)

There is no basis to conclude that CornerStone is entitled to obtain permanent injunctive relief in judicial proceedings rather than through arbitration. The employment contract makes no mention of arbitration, but contains a broad confidentiality provision and the following provision concerning the remedies for a breach: “Employee agrees that the remedy at law of [CornerStone] for violations of the provisions of this agreement will be inadequate and that [CornerStone] shall be entitled to temporary and permanent injunctive relief against such violations, including the cost of reasonable attorney fees.” CornerStone correctly argues that injunctive relief can be awarded by an arbitrator (e.g., *O’Hare v. Municipal Resource Consultants* (2003) 107 Cal.App.4th 267, 277-278), and that the right to provisional relief does not preclude the right to arbitrate (*ibid.*; Code Civ. Proc., § 1281.8). In view of the otherwise bilateral language of the arbitration agreement, we cannot agree that the reservation of the right to seek temporary and permanent injunctive relief “certainly implies” that CornerStone retains “the right to seek redress in court.”

Likewise, the policy does not require participation in the type of pre-arbitration dispute resolution program identified as substantively unconscionable in *Nyulassy v. Lockheed Martin Corp.*, *supra*, 120 Cal.App.4th at pages 1282-1283. In that case, the arbitration agreement required the employee “to submit to discussions with his supervisors in advance of, and as a condition precedent to, having his dispute resolved through binding arbitration.” (*Id.* at p. 1282.) The court explained that this provision was particularly troubling a provision because “[w]hile on its face, this provision may present a laudable mechanism for resolving employment disputes informally, it connotes a less benign goal. Given the unilateral nature of the arbitration agreement, requiring plaintiff to submit to an employer-controlled dispute resolution mechanism (i.e., one without a neutral mediator) suggests that defendant would receive a ‘free peek’ at plaintiff’s case, thereby obtaining an advantage if and when plaintiff were to later demand arbitration.” (*Id.* at pp. 1282-1283.) Here, however, the policy requires only that the employee deliver a written request for arbitration setting forth “a description of the dispute in sufficient detail to advise the Company of the nature of the dispute” for any claim “which cannot be resolved through either direct discussion or mediation.” The employee is not required to submit to informal discussions or mediation as a condition precedent to the arbitration.

Reading the contractual provisions as a whole, we thus conclude that the agreement to arbitrate is bilateral and is not substantively unconscionable.²

² Reynolds’ additional and alternative arguments in support of the court’s order are similarly without merit. Courts have long rejected her argument that requiring her to arbitrate her claims under the agreement violates her seventh amendment right to a jury trial because the agreement did not contain an express waiver of that right. (*Grafton Partners v. Superior Court* (2005) 36 Cal.4th 944, 955-961; *Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 713 [“to predicate the legality of a consensual arbitration agreement upon the parties’ express waiver of jury trial would be as artificial as it would be disastrous”].) In addition, Reynolds’ claim for restitution and an injunction on behalf of herself and other former and current CornerStone employees under Business and Professions Code section 17200 is arbitrable. (*Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303, 318-320.) To the extent that the court

Disposition

The order denying CornerStone's petition to compel arbitration is reversed.
CornerStone is to recover its costs on appeal.

Pollak, J.

We concur:

McGuiness, P. J.

Siggins, J.

determines on remand that Reynolds's claim for an injunction on behalf of the general public is not arbitrable, that claim should be stayed pending completion of the arbitration. (Code Civ. Proc., § 1281.4.)